

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 350 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVINDRA JAYRAMSINH PAWAR**Versus****STATE OF GUJARAT AND OTHERS**

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Appearance :

Ms Bharti Rana for Mr ANIL S DAVE for the petitioner

MR ND Gohil, APP for the respondents

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**Date : 25/07/2006****ORAL JUDGMENT**

This petition is filed by the externee against whom the order of
externment has been passed under the Bombay Police Act. A show-cause
notice was issued on 16th July 2004 on behalf of the Assistant Police

Commissioner, Ahmedabad City, Zone-VI by which the externee was asked to show-cause as to why he should not be externed from the area of Ahmedabad Police Commissionerate as well as adjoining areas of Ahmedabad Rural, Kheda, Gandhinagar and Mehsana Districts for a period of two years. It is alleged in the show-cause notice that the externee is a highhanded person and he is doing illegal activity of bootlegging. It is also alleged that he is keeping dangerous weapons like knife, gupti, etc. It is also alleged that he is compelling the people to pay money in highhanded manner. In the said show-cause notice there is a reference to three pending criminal cases against the externee.

The externee gave reply to the said show-cause notice on 7.3.2005. The Deputy Police Commissioner, Zone-VI, Ahmedabad City vide its order dated 25.7.2005 passed under Section 56[C] of the Bombay Police Act externed the externee from the area of Ahmedabad Police Commissionerate as well as adjoining areas of Ahmedabad Rural, Kheda, Gandhinagar and Mehsana Districts for a period of two years. The said order was challenged by the externee by way of filing appeal. The appellate authority by order dated 13th January 2006 modified the said order of externment partly and reduced the period of externment from two years to one year. The petitioner externee has filed the present petition against the said order of the appellate authority.

Ms Bharti Rana, learned advocate for the petitioner submitted that the show-cause notice was issued on 16th July 2004 and the order of externment was passed on 25th July 2005. It is submitted that there was delay in passing the order of externment. The arguments even otherwise were over on 7th March 2005 and order of externment was passed on 24th July 2005. It is submitted that even after the arguments were concluded, there is a delay in passing the order of externment. The said point is

taken in paragraph 4.5 of the petition. The aforesaid averment is not denied by the respondents by filing any reply worth the name.

It is required to be noted that this Court has also in a series of judgments has already highlighted this aspect in connection with delay in passing the externment orders. In Sitaben M Thakore v. Commissioner of Police, Ahmedabad and others 1997 Cr.L.J. 4511 the learned Single Judge of this Court after referring to unreported decision of the Division Bench of this Court has observed in paragraphs nos.9 and 10 as under:-

“9. On the reading of the aforesaid provisions, it is clear that, on reasonable grounds for believing that the person is engaged or about to be engaged in the commission of offence and further the witnesses are not willing to come forward is the important consideration for the purpose of passing an order under Section 56. The words in the Section 'is engaged or is about to be engaged' refers to the present activity and continued one. It does not refer to a matter of past, meaning thereby that on finding that the activity of the person, the action arose as to what is the immediate near. The question may again arise as to what is the immediate near. If a person is directed or is required to be prevented from committing acts of violence which he is alleged to be repeatedly doing so, then the 'immediate near' would mean, 'within reasonable.' Such reasonable time cannot be the long period of six months or one year.

10. In an unreported judgment of Division Bench of this Court (Coram : K. J. Vaidhya and S. D. Dave, JJ.) being Special Civil

Application No. 1295/94 decided on 24-1-1995, 'reasonable period' has been indicated as of 'six months'. In the said case, the externee was found to be guilty for delay in externment proceedings, but still the Court observed as follows :

"The idea behind the concept appears to be a two fold one : firstly, send out a man who is engaged in antisocial activities in a particular area, and secondly; save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established net work which an underworld element has been able to create in a particular locality. This very idea was revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

Thus, whosoever may be the responsible whether the externee or the authority for delay of the proceedings, the very purpose of the exercise of powers under Section 58 are frustrated if the same is not exercised within a 'reasonable period', because the grounds which for externment which required an immediate action, cannot be said to have continued for a long period."

In the instant case even though the arguments were concluded on 7th March 2005, the order of externment came to be passed on 24th July 2005. The authority should have passed the order within reasonable period. There is no material on record which justifies such inordinate

delay in passing the order. The long delay on the part of the externing authority is sufficient to vitiate the impugned order of externment.

Considering the judgements of this Court as referred to above, this petition is required to be allowed and the same is accordingly allowed. The impugned order of externment dated 25.7.2005 passed by the Deputy Commissioner of Police, Zonce-VI, Ahmedabad City passed against externee – Keshavkumar @ Kesho Jairamsinh Pawar, as well as order dated 13.1.2006 passed by the appellate authority are set aside. Rule is made absolute accordingly. Direct Service is permitted.

(P.B.Majmudar, J.)

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